



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P.[MD].No.296 of 2020

and

CRL.M.P.[MD]Nos.89 and 90 of 2020

1.Haridoss
2.Kumar @ Krishnakumar
3.George
4.Vincent Jayapalan
5.Sahul Hameed
6.Sasi

... Petitioners / Accused Nos.1 to 6

Vs.

State,
Represented by the Inspector of Police,
Eraniel, Kanyakumari District.

... Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records relating to the complaint in C.C.No.152 of 2019 on the file of the learned Judicial Magistrate, Eraniel and quash the same.

For Petitioners : Mr.AR.L.Sundaresan,
Senior Counsel
for M/s.AL.Ganthimathi

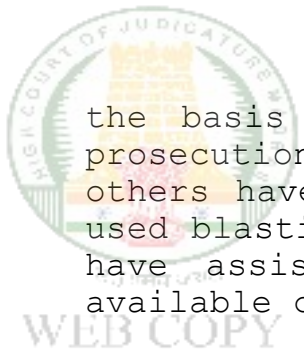
For Respondent : Mr.A.Thiruvadikumar,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to quash the final report in C.C.No.152 of 2019 on the file of the learned Judicial Magistrate, Eraniel filed against the petitioners for the offence punishable under Section 9B(1)(b) of Explosives Act.

2.The crux of the allegation in the final report is that the accused without expert, namely blaster, are having explosives in the quarry run by the second accused thereby, all the accused are punishable under Section 9(B)(1)(b) of Explosives Act.

3.The learned Senior Counsel appearing for the petitioners submitted that the second accused is having a valid license to run quarry and others have been roped into the final report, merely on



the basis of hearsay statements of the witnesses. Even entire prosecution materials taken as face value, the same do not show that others have committed any offence under the Explosives Act or they used blasting. Except the allegation that the accused 1 and 3 to 6 have assisted the second accused, there is no other materials available on record to prosecute all the accused.

4.It is his further contention that as the second accused is a valid licence holder, the charge under Section 9 B 1(b) of the Explosives Act, would not be attracted and there cannot be any prosecution, hence he prayed for quashing the final report.

5.The learned Additional Public Prosecutor appearing for the respondent submitted that the accused 1 and 3 to 6 have assisted the second accused and carried out the blast illegally without any expert to blast explosives, which is in fact violation of the rules. The statements of the witnesses clearly show that the accused 1 and 3 to 6 have also assisted the second accused. Further, the second accused has violated the licence conditions, therefore, he has to face trial. Hence, he opposed to quash the final report.

6.I have perused the entire materials. Normally, the Court will not venture into find out the veracity of the statements recorded by the investigating agency. At the time when the entire investigation materials collected by the investigating agency taken as face value do not constitute any offence against the petitioners, there is no difficult for the Court to exercise power under Section 482 of Cr.P.C., to prevent the abuse of process of law. The very final report filed for the offence punishable under Section 9B1(b) of the Explosives Act, indicates that the second accused is a licence holder and given licence to possess explosives. The only allegation against the second accused is that he has violated the conditions by allowing blasting of explosives without expert blaster.

7.It is relevant to note that except the statement that other accused have assisted the second accused, there is no other materials whatsoever collected by the Investigation Officer to show that other accused had involved in blasting the explosives.

8.Therefore, this Court is of the view that in the absence of any materials collected by the prosecution against other accused, even to infer prima facie that they handled the explosives in violation of any rules or the Act, the prosecution against the accused 1 and 3 to 6 is not maintainable. As far as the second accused is concerned, admittedly, he is running a quarry and has obtained licence. It is the specific allegation that he has handled the explosives without blaster as required under the rule. Whether or not such blasting took place without any expert is a matter of evidence, it is to be proved by the prosecution in the trial.



9. In such view of the matter, as the *prima facie* materials are available against him, the final report cannot be quashed as against the second accused alone. However, in respect of others, the entire final report is quashed.

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10. At this time, the learned Senior Counsel appearing for the petitioners seeks indulgence of this Court to dispense with the personal appearance of the second accused before the trial Court.

11. Considering the nature of the final report taken on file for the alleged offence reported in the year 2011, the personal appearance of the second accused before the trial Court is dispensed with, except for answering the charges, receiving copies, questioning under Section 313 of Cr.P.C., or any other date to be fixed by the trial Court. The trial Court is directed to expedite the trial and dispose of the case as expeditiously as possible.

12. Accordingly, this Criminal Original Petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2022

Sub Assistant Registrar (CS)

Myr

To

1. The Judicial Magistrate,
Eraniel.

2. The Inspector of Police,
Eraniel, Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.SL.GANTHIMATHI, Advocate (SR-11105[F] dated 10/03/2022)

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